

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1934/13	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/069,618		Filed June 3, 2002
	First Named Inventor Elchanan Bruckheimer		
	Art Unit 3731	Examiner G.K. Dawson	
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 33,883</p>			
		<p>Signature MARK H. FRIEDMAN Typed or printed name</p> <p>301-9521011 Telephone number</p> <p>Nov. 8, 2007 Date</p>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
	§	
Elchanan Bruckheimer	§	Confirmation No. 3477
	§	
Serial No.: 10/069,618	§	
	§	
Filed: June 3, 2002	§	Group Art Unit: 3731
	§	
For: Intravascular Device and Method	§	Attorney
Using It	§	Docket: 1934/13
	§	
Examiner: Glenn K. Dawson	§	

Commissioner for Patents
P.O. Box 1450, Alexandria
Virginia, 22313-1450

LETTER ACCOMPANYING PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Sir:

Applicant requests review of the Final Office Action mailed August 9, 2007. This letter is filed concurrently with a Notice of Appeal and form SB33 requesting pre-appeal brief review. As explained in detail below, the Applicant respectfully submits that the Examiner has made errors of fact and law in applying the prior art to the pending claims, and has failed to find all elements of the independent claims anticipated by the prior art. Accordingly, the application is not in condition for appeal and Applicant should be spared the time and expense associated with the preparation and filing of an appeal brief. Applicant further requests that the pending claims be allowed, or alternatively, that prosecution be reopened and an appropriate Office communication issued in due course.

Claims 15-17 have been rejected under § 102(b) as anticipated by Lesh et al. (US 6152144). However, after careful review, the Applicant is unable to find any

basis in Lesh for the asserted anticipation with regard to a number of features explicitly recited in the claims. Examples of these features will now be illustrated.

Feature 1

Independent claim 15 recites that the closed loop of flexible material is *“deployed within said lumen in a first state in which said closed loop is folded on itself and substantially straightened so as to extend substantially parallel to said feed direction.”* The Applicant finds no indication in Lesh that any closed loop is straightened so as to extend parallel to the feed direction of the catheter. The Examiner has alluded to the text of Lesh (col. 8, lines 8-10) which states that the loop *“may have connections or joints spaced thereon to facilitate contracting or folding of the device for non-invasive delivery,”* but the Applicant finds no indication in the Lesh document that the “contracted” or “folded” state of the loop would be straightened so as to extend parallel to the feed direction of the catheter. To the contrary, the only figure illustrating deployment of the device within the delivery catheter is Figure 11 which shows “collapsed occluding member 101” appearing to be bunched-up on itself, and certainly not straightened parallel to the feed direction of the catheter. Furthermore, the radial spoke elements of “frame structure 14” would seem to preclude straightening of the loop along the feed direction.

Feature 2

Independent claim 15 recites that the closed loop of flexible material is *“configured so as to be elastically biased to a predefined curved form such that, when said closed loop is advanced beyond said delivery system, said biasing to a curved form results in deployment of said loop in a direction generally perpendicular to said feed direction.”* The Applicant finds no indication in Lesh that any biasing to a predefined form has a causal relation to the reorientation of the loop perpendicular to

the feed direction. To the contrary, it appears that the orientation of the loop is dictated by radial tethers of "frame structure 14" relative to "retention member 12" which is deployed ahead of the loop. This is explicitly stated in column 8, lines 64-67 which disclose that:

A retention member 38 maintains the position of an occluding member 41 in a substantially perpendicular orientation with respect to a longitudinal axis of the LAA 42.

thereby leaving no room for doubt that it is the retention member which dictates the orientation of the loop of the occluding device. In this respect, the Lesh reference is analogous to the Pavenik and Taheri references which were previously cited by the Examiner and which were overcome to the Examiner's satisfaction by arguments presented in the Applicant's response of June 28, 2007.

Feature 3

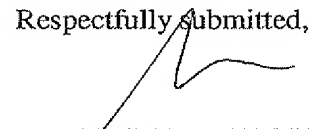
Independent claim 15 recites that the intravascular device is "*configured such that said intravascular device is retained in a given position within the vessel primarily by contact of said at least one loop against the inner wall of the vessel.*" The Applicant finds no indication in Lesh that the device is configured to be retained by the loop. To the contrary, Lesh clearly teaches configuration of the device to be retained primarily by "tissue penetrating shaft 25" and the associated anchoring configurations 26 or 29. This is explicitly stated, for example, in column 8, lines 62-64 which disclose that:

A helically shaped distal extremity 35 of a tissue penetrating shaft 36 has been screwed into the wall tissue of the LAA and is mechanically secured thereto.

thereby leaving no room for doubt that retention of the device is primarily by anchoring of helically shaped distal extremity 35, and not by the loop of the occluding device.

In view of the above observations, the Applicant respectfully submits that the Examiner has failed to show any teachings for multiple features explicitly recited in independent claim 15 of record, thereby rendering the rejection of this claim under § 102 clearly improper. For this reason, it is respectfully submitted that this case is not in condition for appeal. Allowance of the case, or reopening of prosecution is respectfully solicited.

Respectfully submitted,



Mark M. Friedman
Attorney for Applicant
Registration No. 33,883

Date: November 8, 2007